

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: David Jay Duffield

Examiner: Chokshi, Pinkal R

Serial No: 10/580,806

Group Art Unit: 2425

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Docket: PU030224

For: BROADCAST CONDITIONAL ACCESS SYSTEM WITH IMPULSE
PURCHASE CAPABILITY IN A TWO WAY NETWORK

Mail Stop Appeal Brief-Patents
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Applicant appeals the status of Claims 1, 2, 4-8 and 10-13 as presented in response to the non-final Office Action dated July 18, 2008, the final Office Action dated December 9, 2008 and rejected in the non-final Office Action dated August 4, 2009, pursuant to the Notice of Appeal filed concurrently herewith and submits this appeal brief. Applicants request a two-month extension under 37 C.F.R. 1.136(a) to submit this brief. Please charge Deposit Account 07-0832 for this extension of time for the submission of this appeal brief and the Notice of Appeal. Appellants do not request an oral hearing.

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1. Real Party in Interest

The real party in interest is THOMSON LICENSING S.A.

2. Related Appeals and Interferences

None

3. Status of Claims

Claims 1, 2, 4-8 and 10-13 are pending. Claims 1, 2, 4-8 and 10-13 stand rejected and are under appeal. Applicant's Claims 3 and 9 have been cancelled without prejudice.

A copy of the Claims 1, 2, 4-8 and 10-13 is presented in Section 8 below.

4. Status of Amendments

An Amendment under 37 CFR §1.111, filed with the PTO on October 23, 2008 in response to a non-final Office Action dated July 18, 2008, was entered. An Informal or Non-Responsive Amendment under 37 CFR §1.116, along with a Request for Continued Examination, was filed with PTO on April 09, 2009 in response to a final Office Action dated December 09, 2008. In response to a Notice of Non-Compliant Amendment under 37 C.F.R. 1.121, which was sent on April 15, 2009, a response to a non-final Office Action dated May 21, 2009 was entered. No Responses/Amendments were filed subsequent to the above Amendment filed on May 21, 2009. A non-final Office Action dated August 4, 2009, to which this appeal brief is directed, is currently pending.

5. Summary of Claimed Subject Matter

Independent Claim 1 is directed to “[a]n access device” (Claim 1, preamble).

“[M]eans for communicating an impulse purchase selection to a service provider using an out of band frequency which is different than content providing frequencies” as recited in Claim 1 is described, e.g., at: page 6, lines 2-3 and page 6, lines 17-18.

Moreover, the subject matter of this element of Claim 1 involves, e.g.: elements 240, 244, and 245 of FIG. 2.

“[M]eans for receiving an authorization key transmitted by the service provider in response to the impulse purchase selection” as recited in Claim 1 is described, e.g., at: page 6, line 27 – page 7, line 11. Moreover, the subject matter of this element of Claim 1 involves, e.g.: elements 215, 223, 227 and 240 of FIG. 2.

“[M]eans for receiving a program associated with the impulse purchase selection” as recited in Claim 1 is described, e.g., at: page 6, lines 1-2 and page 6, lines 9-11. Moreover, the subject matter of this element of Claim 1 involves, e.g.: elements 215 and 229 of FIG. 2.

“[M]eans for processing the received program using the authorization key” as recited in Claim 1 is described, e.g., at: page 6, lines 9-21. Moreover, the subject matter of this element of Claim 1 involves, e.g.: elements 209, 211, 215, 216 and 217 of FIG. 2.

“[M]eans for generating a billing record in response to the receipt of the authorization key, wherein the access device transmits the billing record to the service provider” as recited in Claim 1 is described, e.g., at: page 6, lines 4-6 and page 7, lines 18-20. Moreover, the subject matter of this element of Claim 1 involves, e.g.: elements 238,

242, 260 and 270 of FIG. 2.

Independent Claim 2 is directed to “[a]n access device” (Claim 2, preamble).

“[M]eans for indicating a desired impulse purchase selection using an out of band frequency which is different than content providing frequencies” as recited in Claim 2 is described, e.g., at: page 6, lines 2-3 and page 6, lines 17-18. Moreover, the subject matter of this element of Claim 2 involves, e.g.: elements 240, 244, and 245 of FIG. 2.

“[M]eans for communicating the desired impulse purchase selection to a service provider” as recited in Claim 2 is described, e.g., at: page 6, lines 2-3 and page 7, lines 2-5. Moreover, the subject matter of this element of Claim 2 involves, e.g.: elements 215, 240 and 245 of FIG. 2.

“[M]eans for receiving an authorization key transmitted to the access device, and specific to, the desired impulse purchase selection” as recited in Claim 2 is described, e.g., at: page 6, line 27 – page 7, line 11. Moreover, the subject matter of this element of Claim 2 involves, e.g.: elements 215, 223, 227 and 240 of FIG. 2.

“[M]eans for receiving the transmission of a desired program associated with the impulse purchase selection” as recited in Claim 2 is described, e.g., at: page 6, lines 9-11. Moreover, the subject matter of this element of Claim 2 involves, e.g.: elements 229 and 215 of FIG. 2.

“[M]eans for processing the received program using the authorization key” as recited in Claim 2 is described, e.g., at: page 6, lines 9-21. Moreover, the subject matter of this element of Claim 2 involves, e.g.: elements 209, 211, 215, 216 and 217 of FIG. 2.

“[M]eans for generating a billing record in response to the receipt of the

authorization key, wherein the access device transmits the billing record to the service provider” as recited in Claim 2 is described, e.g., at: page 6, lines 4-6 and page 7, lines 18-20. Moreover, the subject matter of this element of Claim 2 involves, e.g.: elements 238, 242, 260 and 270 of FIG. 2.

Independent Claim 7 is directed to “[a]n access device” (Claim 7, preamble).

“[A] tuning and a communications unit for transmitting an impulse purchase message using an out of band frequency which is different than content providing frequencies and, receiving an authorization key transmitted in response to the transmission of the impulse purchase message and associated with the impulse purchase program” as recited in Claim 7 is described, e.g., at: page 6, lines 2-3, page 6, lines 17-18, and page 6, line 27 – page 7, line 11. Moreover, the subject matter of this element of Claim 7 involves, e.g.: elements 240, 244, 245, 227, 215 and 223 of FIG. 2.

“[A] controller and decoder unit responsive to the authorization key that formats a digital program into a video display” as recited in Claim 7 is described, e.g., at: page 6, lines 8-15 and page 6, line 27 - page 7, line 2. Moreover, the subject matter of this element of Claim 7 involves, e.g.: elements 215, 217, 231 and 233 of FIG. 2.

“[A] billing generator which generates a billing record in response to the receipt of the authorization key, wherein the access device transmits the billing record to the same location as the impulse purchase message” as recited in Claim 7 is described, e.g., at: page 6, lines 4-6 and page 7, lines 18-20. Moreover, the subject matter of this element of Claim 7 involves, e.g.: elements 238, 242, 260 and 270 of FIG. 2.

Independent Claim 8 is directed to “[a] method of providing a secure means for

purchasing an impulse purchase program” (Claim 8, preamble).

“[C]ommunicating a message using an out of band frequency which is different than content providing frequencies to a service provider means that indicates an impulse purchase selection” as recited in Claim 8 is described, e.g., at: page 7, lines 22-24, page 6, lines 2-3, and page 6, lines 17-18. Moreover, the subject matter of this element of Claim 8 involves, e.g.: elements 240, 244 and 245 of FIG. 2 and element 310 of FIG. 3.

“[R]eceiving, at a receiver, authorization information transmitted in response to the communicated message, and specific to the impulse purchase program” as recited in Claim 8 is described, e.g., at: page 7, lines 25-27 and page 6, line 27 – page 7, line 11. Moreover, the subject matter of this element of Claim 8 involves, e.g.: elements 215, 227 and 233 of FIG. 2 and element 320 of FIG. 3.

“[R]eceiving, at a receiver, the impulse purchase program” as recited in Claim 8 is described, e.g., at: page 7, lines 29-30, page 6, lines 9-11 and page 6, lines 27-30. Moreover, the subject matter of this element of Claim 8 involves, e.g.: elements 229 and 215 of FIG. 2 and element 340 of FIG. 3.

“[P]rocessing the impulse purchase program in response to the authorization information” as recited in Claim 8 is described, e.g., at: page 6, lines 8-15 and page 7, lines 30-32. Moreover, the subject matter of this element of Claim 8 involves, e.g.: elements 223 and 233 of FIG. 2 and elements 350 and 360 of FIG. 3.

“[G]enerating a billing record at the receiver in response to the receipt of the authorization key and transmitting the billing record from the receiver to the service provider” as recited in Claim 8 is described, e.g., at: page 6, lines 4-6 and page 7, lines

18-20. Moreover, the subject matter of this element of Claim 8 involves, e.g.: elements 238, 260 and 270 of FIG. 2.

Independent Claim 13 is directed to “[a] method of providing a secure means for purchasing an impulse purchase program” (Claim 13, preamble).

“[S]electing the desired impulse purchase program” as recited in Claim 13 is described, e.g., at: page 6, line 2 and page 7, lines 22-23. Moreover, the subject matter of this element of Claim 13 involves, e.g.: elements 240 of FIG. 2 and elements 301 of FIG. 3.

“[C]ommunicating the desired impulse purchase program selection from an access device to a service provider using an out of band frequency which is different than content providing frequencies” as recited in Claim 13 is described, e.g., at: page 6, lines 2-3, page 6, lines 17-18, and page 7, line 24. Moreover, the subject matter of this element of Claim 13 involves, e.g.: elements 240, 244, and 245 of FIG. 2 and element 310 of FIG. 3.

“[R]esponding to the communicated impulse purchase program selection by transmitting an authorization code to the access device uniquely associated with the desired impulse purchase program” as recited in Claim 13 is described, e.g., at: page 7, lines 25-27 and page 6, line 27 – page 7, line 11. Moreover, the subject matter of this element of Claim 13 involves, e.g.: elements 215, 227 and 233 of FIG. 2 and element 320 of FIG. 3.

“[S]toring the authorization code associated with the desired impulse purchase program into a security module in the access device” as recited in Claim 13 is described,

e.g., at: page 7, lines 8-11 and page 7, lines 27-28. Moreover, the subject matter of this element of Claim 13 involves, e.g.: elements 223, 227, 233 and 215 of FIG. 2 and element 330 of FIG. 3.

“[T]ransmitting to the access device an impulse purchase program having an entitlement code associated with authorization code stored in the security module” as recited in Claim 13 is described, e.g., at: page 7, lines 29-30 and page 6, lines 2-4. Moreover, the subject matter of this element of Claim 13 involves, e.g.: elements 213 of FIG. 2 and element 340 of FIG. 3.

“[D]ecoding the entitlement code” as recited in Claim 13 is described, e.g., at: page 7, line 30. Moreover, the subject matter of this element of Claim 13 involves, e.g.: element 350 of FIG. 3.

“[C]omparing the entitlement code to the code stored in the security module to permit viewing of the impulse purchase program” as recited in Claim 13 is described, e.g., at: page 7, lines 30-34. Moreover, the subject matter of this element of Claim 13 involves, e.g.: element 360, 370 and 380 of FIG. 3.

“[G]enerating a billing record at the access device in response to the receipt of the authorization key and transmitting the billing record from the access device to the service provider” as recited in Claim 13 is described, e.g., at: page 6, lines 4-6 and page 7, lines 18-20. Moreover, the subject matter of this element of Claim 13 involves, e.g.: element 238, 260 and 270 of FIG. 3.

6. Grounds of Rejection to be Reviewed on Appeal

Claims 1, 2, 4-8 and 10-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication 2002/0044658 to Wasilewski et al (hereinafter “Wasilewski”) in view of US Patent 6,697,489 to Candelore et al (hereinafter “Candelore”) and US Patent 5,592,551 to Lett et al (hereinafter “Lett”).

The preceding rejection under 35 U.S.C. §103(a) is presented for review in this Appeal with respect to Claims 1, 2, 4-8 and 10-13, as argued with respect to independent Claims 1, 2, 7, 8 and 13.

Regarding the grouping of the claims, Claims 4-6 stand or fall with Claim 2, and Claims 10-12 stand or fall with Claim 8, due to their respective dependencies. Claims 1, 7 and 13 stand or fall by themselves.

7. Argument

A. Introduction

In recent years, subscriber broadcast systems have become increasing sophisticated and, nowadays, these broadcast systems offer a wider range of services than ever before. In addition to charging the customer a monthly subscription fee for typical television programming, broadcast systems now provide customers with the opportunity to order specialized broadcasting options such as pay-per-view programs and impulse purchase programs. As explained in the present specification, an “impulse purchase” relates to the situation where a customer decides to watch a program in close proximity to the time the program is broadcast (page 1, lines 19-22).

Although modern subscriber broadcast systems are able to offer customers a

wider variety of services, these broadcasts systems are plagued with numerous problems, including problems which relate to security issues and billing procedures.

Advantageously, the present invention provides a subscriber broadcast system which remedies many of these problems. More particularly, the present invention provides “[a]n access device” (Claims 1, 2 and 7) and “[a] method of providing a secure means for purchasing an impulse purchase program” (Claims 8 and 13) which provide a number of advantages over the prior art and dispense with the problems that plague prior art systems.

In addition, the claims of the pending invention include novel features not shown in the cited references and that have already been pointed out to the Examiner. Thus, it is respectfully asserted that independent Claims 1, 2, 7, 8 and 13 are each patentably distinct and non-obvious over the cited references in their own right. For example, the below-identified elements of independent Claims 1, 2, 7, 8 and 13 are not shown in the cited reference, taken either singly or in any combination. Moreover, these claims are distinct from each other in that they are directed to different implementations and/or include different elements. For example, Claims 1, 2 and 7 are directed to an access device, while Claims 8 and 13 are directed to a method of providing a secure means for purchasing an impulse purchase program. Moreover, the access devices recited in Claims 1, 2 and 7, along with the methods set forth in Claims 8 and 13, each include different elements from each other and they need to be considered separately. Accordingly, each of independent Claims 1, 2, 7, 8 and 13 represent separate features/implementations of the invention that are separately novel and non-obvious with respect to the prior art and

to the other claims. As such, independent Claims 1, 2, 7, 8 and 13 are separately patentable and are each presented for review in this appeal.

B. Whether Claims 1, 2, 4-8, and 10-13 are Rendered Obvious under 35 U.S.C. §103(a) by U.S. Patent Publication 2002/0044658 to Wasilewski in view of U.S. Patent 6,697,489 to Candelore and U.S. Patent 5,592,551 to Lett

“To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art” (MPEP §2143.03, citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

The Examiner rejected independent Claims 1, 2, 7, 8 and 13 as being unpatentable over U.S. Patent Publication 2002/0044658 to Wasilewski in view of U.S. Patent 6,697,489 to Candelore and U.S. Patent 5,592,551 to Lett. The Examiner contends that the cited references show all the limitations set forth in Claims 1, 2, 7, 8 and 13.

Wasilewski is directed to a cable television system providing conditional access to particular content (Abstract). Wasilewski discloses a cable television system from which programs are broadcast to the set top units of clients (FIG. 1, items 113 and 105). As part of the system in Wasilewski, a user may make impulse purchases through a set top unit to request a certain program for viewing ([0099]).

Candelore relates to a method and apparatus for securing control words in digital devices (Title; col. 1, lines 14-16). Candelore teaches that a conditional

access unit is sent scrambled digital content and an encrypted control word (col. 3, lines 13-17; Claim 1). The control word is decrypted using a key stored in the conditional access device (col. 3, lines 15-18; Claim 1). The decrypted control word is then used to descramble the scrambled digital content (col. 3, lines 17-19; Claim 1).

Lett is directed towards providing an electronic program schedule to a user of a subscription television system (col. 1, lines 25-30). According to Lett, a user may select programs, including pay-per-view and video-on demand programs, for watching or recording directly from the electronic program guide (col. 3, lines 1-4). Moreover, Lett teaches that near video-on-demand programs may allow for pause, rewind and fast-forward functions (col. 3, lines 6-8).

It will be shown herein below that the limitations of Claims 1, 2, 7, 8 and 13 reproduced herein are not shown in the cited combination of Wasilewski, Candelore and Lett, and that Claims 1, 2, 7, 8 and 13 should be allowed, including the claims dependent there from as identified in Section 6 herein.

B1. Claims 1, 2, 4-8 and 10-13

Initially, it is respectfully pointed out to the Examiner that Claims 4-6 directly or indirectly depend from independent Claim 2 and Claims 10-12 directly or indirectly depend from independent Claim 8. Thus, Claims 4-6 include all the elements of Claim 2 and Claims 10-12 include all the limitations of Claim 8.

It is respectfully asserted that the cited references, taken either singly or in

combination, fail to teach or suggest at least the following elements of independent

Claims 1 and 2: “*means for generating a billing record in response to the receipt of the authorization key, wherein the access device transmits the billing record to the service provider.*” (emphasis added)

Moreover, it is respectfully asserted that the cited references, taken either singly or in combination, fail to teach or suggest at least the following elements of independent Claim 7: “*a billing generator which generates a billing record in response to the receipt of the authorization key, wherein the access device transmits the billing record to the same location as the impulse purchase message.*” (emphasis added)

Further, it is respectfully asserted that the cited references, taken either singly or in combination, fail to teach or suggest at least the following elements of independent Claim 8: “*generating a billing record at the receiver in response to the receipt of the authorization key and transmitting the billing record from the receiver to the service provider.*” (emphasis added)

Lastly, it is respectfully asserted that the cited references, taken either singly or in combination, fail to teach or suggest at least the following elements of independent Claim 13: “*generating a billing record at the access device in response to the receipt of the authorization key and transmitting the billing record from the access device to the service provider.*” (emphasis added)

Regarding the italicized elements of Claims 1, 2, 7, 8 and 13, the Examiner has acknowledged that neither Wasilewski nor Candelore can be viewed as teaching or suggesting such. However, the Examiner asserts that Lett discloses the above-identified

elements at col. 4, line 41 – col. 5, line 4 and FIG. 2, items 10, 14 and 30. The Applicants respectfully disagree with the Examiner's reading of the preceding cited sections of Lett.

Lett is directed to a subscription television system that includes an electronic programming guide which allows users to select programs for watching and recording (Lett, col. 2, lines 64-67). As can be seen in FIG. 2, the system in Lett is comprised of three main sections: a central control center (item 10), a headend (item 12) and a subscriber terminal (item 14). Lett provides a very broad discussion regarding the components which comprise the central control center and how they interact with other components of the system at col. 4, line 41 – col. 5, line 4. In this passage, Lett discloses that the central control center can forward authorization data to subscriber terminals. Later on in the passage, Lett also reveals that subscribers can transmit billing data to the central control center. However, Lett, fails to disclose the generation of a billing record **“in response”** to the receipt of the authorization key. The mere fact that Lett separately mentions these two details regarding the functioning of the control center, does not in any way suggest that Lett teaches a subscriber terminal which generates a billing record “in response” to the receipt of authorization data as required Claims 1, 2, 7, 8 and 13 of the present application.

One of ordinary skill in the art would recognize that the generation of a billing record “in response” to the reception of an authorization key has several advantages. For example, the Applicants' specification points out that the authorization key may be used to identify the particular purchase which has been requested by a subscriber (page 5, lines

18-19). Since the pricing of requested purchases may vary, the authorization key can be used by the billing generator of the subscriber terminal to determine the amount that the subscriber should be billed.

It would also be recognized by one of ordinary skill that the generation of a billing report in response to receiving an authorization key has the additional advantage of ensuring that a subscriber is only charged for programs which were actually sent to his terminal. For instance, a subscriber broadcast system may be configured to generate a billing report in response to a customer's request to purchase a program (as opposed to the present invention which is configured to generate a billing report in response to receiving the authorization key). In such a system, a number of different problems could possibly arise which would prevent a subscriber from receiving the authorization key (e.g., a network failure). Although the subscriber would be billed based upon his request to purchase the program, the subscriber would not be able to view the program since he did not receive the authorization key. However, by generating a billing record "in response" to the receipt of an authorization key, the present invention ensures that the customer is only charged for programs for which could actually be viewed. Thus, Lett fails to teach or suggest many of the advantages which are provided by the claims of the present invention.

As mentioned above, the Examiner has acknowledged that neither Wasilewski nor Candelore can be viewed as curing the deficiencies with respect to the italicized elements set forth above. Therefore, for at least the reasons stated above, it is believed that the cited references fail to teach or suggest "generating a billing record in response to the

receipt of the authorization key” as recited in Claim 1 and 2, and essentially recited in Claims 7, 8 and 13.

In addition to the reasons set forth above, it is respectfully asserted that the cited references, taken either singly or in combination, at least fail to teach or suggest:

“transmitting an authorization code to the access device uniquely associated with the desired impulse purchase program” as recited in Claim 13. (emphasis added)

Moreover, it is respectfully asserted that the cited references, taken either singly or in combination, at least fail to teach or suggest: *“means for receiving an authorization key transmitted to the access device, and specific to, the desired impulse purchase selection”* as recited in Claim 2. (emphasis added)

Further, it is respectfully asserted that the cited references, taken either singly or in combination, at least fail to teach or suggest: *“receiving an authorization key transmitted in response to the transmission of the impulse purchase message and associated with the impulse purchase program”* as recited in Claim 7. (emphasis added)

Lastly, it is respectfully asserted that the cited references, taken either singly or in combination, at least fail to teach or suggest: *“receiving, at a receiver, authorization information transmitted in response to the communicated message, and specific to the impulse purchase program”* as recited in Claim 8. (emphasis added)

Regarding the italicized elements of Claims 2, 7, 8 and 13, the Examiner asserts that Wasilewski discloses the above-identified elements at paragraph [0048]. The Applicants respectfully disagree with the Examiner’s reading of cited passage in Wasilewski for the following reasons.

Wasilewski is directed to a cable television system providing conditional access to particular content (Abstract). The cable television system described therein broadcasts programs to the set top units of subscribers (FIG. 1, items 113 and 105). Moreover, paragraph [0048] of Wasilewski further discloses that a subscriber's set top box is sent authorization information. However, Wasilewski does not disclose that the authorization key which is sent to the set top units is "specific to" or that it "uniquely" identifies the impulse purchase requested by the customer as required by Claims 2, 7, 8 and 13 of the present application.

As pointed out above, one of ordinary skill in the art would recognize that sending an authorization key which uniquely identifies a purchased program allows the billing generator of the subscriber's terminal to determine the amount a customer should be charged. In addition, it would also be recognized that an authorization key which is uniquely tailored to a specific purchase would provide additional security from hackers. For instance, if a hacker was able to obtain an authorization key that was uniquely associated with a particular purchase, the hacker would only be able to "steal" the specific program that was associated with the key. However, if the authorization key was not uniquely associated with the particular program, the hacker could steal all of the programs that were associated with the authorization key.

It is also worth noting that neither Lett nor Candelore are able to cure the deficiencies of Wasilewski with respect to the above-identified limitations found in Claims 2, 7, 8 and 13. The Examiner cited Candelore for the purpose of showing the

element of “communicating to a service provider using an out of band frequency.”

Although Candelore provides a method and apparatus for securing control words, Candelore teaches nothing regarding a subscriber broadcast system which includes an authorization key for uniquely identifying an impulse purchase of a customer. Further, the Examiner cited Lett for the purpose of showing a subscriber terminal which could generate a billing record and transmit the billing record to the service provider. Lett discloses a method and apparatus for providing an interactive electronic programming guide. However, like Candelore, Lett also fails to disclose transmission of an authorization key which is specific to an impulse purchase program.

Therefore, for at least the reasons set forth above, Claims 1, 2, 7, 8 and 13 are believed to be patentably distinct and non-obvious over the combination of Wasilewski, Candelore and Lett.

Moreover, “[i]f an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious” (MPEP §2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)). All remaining claims depend from either Claim 1, 2, 7, 8 or 13, or a claim which itself is dependent from one of these claims. Accordingly, all remaining claims are patentably distinct over the cited references for at least the reasons set forth above. Thus, reconsideration of this rejection is respectfully requested.

C. Conclusion

At least the above-identified limitations of the pending claims are not disclosed or

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suggested by the teachings of the cited references. Accordingly, it is respectfully requested that the Board reverse the rejections of Claims 1, 2, 4-8 and 10-13 under 35 U.S.C. § 103(a).

Respectfully submitted,

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8. CLAIMS APPENDIX

1. (Previously Amended) An access device comprising:

means for communicating an impulse purchase selection to a service provider using an out of band frequency which is different than content providing frequencies;

means for receiving an authorization key transmitted by the service provider in response to the impulse purchase selection;

means for receiving a program associated with the impulse purchase selection;

means for processing the received program using the authorization key; and

means for generating a billing record in response to the receipt of the authorization key, wherein the access device transmits the billing record to the service provider.

2. (Previously Amended) An access device comprising:

means for indicating a desired impulse purchase selection using an out of band frequency which is different than content providing frequencies;

means for communicating the desired impulse purchase selection to a service provider;

means for receiving an authorization key transmitted to the access device, and specific to, the desired impulse purchase selection;

means for receiving the transmission of a desired program associated with the impulse purchase selection;

means for processing the received program using the authorization key; and

means for generating a billing record in response to the receipt of the authorization key, wherein the access device transmits the billing record to the service provider.

3. Cancelled.

4. (Original) The access device in claim 2, wherein the means for receiving the authorization key receives the authorization key via an out of band frequency.

5. (Original) The access device in claim 2, wherein the means for communicating the desired impulse purchase utilizes a two way communications interface.

6. (Previously Amended) The access device in claim 5, wherein the billing record transmitted to the service provider is transmitted via the two way communications interface.

7. (Previously Amended) An access device comprising:
a tuning and a communications unit for transmitting an impulse purchase message using an out of band frequency which is different than content providing frequencies and, receiving an authorization key transmitted in response to the transmission of the impulse purchase message and associated with the impulse purchase program;

a controller and decoder unit responsive to the authorization key that formats a digital program into a video display; and

a billing generator which generates a billing record in response to the receipt of the authorization key, wherein the access device transmits the billing record to the same location as the impulse purchase message.

8. (Previously Amended) A method of providing a secure means for purchasing an impulse purchase program comprising the steps of:

communicating a message using an out of band frequency which is different than content providing frequencies to a service provider means that indicates an impulse purchase selection;

receiving, at a receiver, authorization information transmitted in response to the communicated message, and specific to the impulse purchase program;

receiving, at a receiver, the impulse purchase program;

processing the impulse purchase program in response to the authorization information;
and

generating a billing record at the receiver in response to the receipt of the authorization key and transmitting the billing record from the receiver to the service provider.

9. Cancelled.

10. (Original) The method of claim 8, wherein the receiving step comprises receiving the authorization via an out of band frequency.

11. (Original) The method of claim 8, wherein the communicating step comprises communicating the message via a two way communications interface.

12. (Previously Amended) The method of claim 8, wherein the billing record is transmitted to the service provider via the two way communications interface.

13. (Previously Amended) A method of providing a secure means for purchasing an impulse purchase program comprising the steps of:

selecting the desired impulse purchase program;

communicating the desired impulse purchase program selection from an access device to a service provider using an out of band frequency which is different than content providing frequencies;

responding to the communicated impulse purchase program selection by transmitting an authorization code to the access device uniquely associated with the desired impulse purchase program;

storing the authorization code associated with the desired impulse purchase program into a security module in the access device;

transmitting to the access device an impulse purchase program having an entitlement code associated with authorization code stored in the security module;

decoding the entitlement code;

comparing the entitlement code to the code stored in the security module to permit

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Final Office Action Dated: December 9, 2008

Non-Final Office Action Dated: August 4, 2009

PATENT

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viewing of the impulse purchase program; and

generating a billing record at the access device in response to the receipt of the authorization key and transmitting the billing record from the access device to the service provider.

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9. RELATED EVIDENCE APPENDIX

None.

CUSTOMER NO.: 24498

Serial No.: 10/580,806

Final Office Action Dated: December 9, 2008

Non-Final Office Action Dated: August 4, 2009

PATENT

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10. RELATED PROCEEDINGS APPENDIX

None